

**FILED**

**MAY 19 2006**

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFREY JAMINE KEYES,

Petitioner-Appellant,

v.

MICHAEL YARBROUGH,

Respondent-Appellee.

No. 04-16895

D.C. No. C-C 03-0254 SBA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Saundra Brown Armstrong, District Judge, Presiding

Submitted May 16, 2006<sup>\*\*</sup>  
San Francisco, California

Before: KOZINSKI and FISHER, Circuit Judges, and BLOCK, District Judge.<sup>\*\*\*</sup>

Petitioner never argued to the state trial court that Runion's willingness to testify about the 1995 murder precluded a finding of unavailability. Thus,

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<sup>\*</sup>This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup>This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup>The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

petitioner defaulted his Confrontation Clause claim pursuant to California's contemporaneous objection rule. *See People v. Scott*, 578 P.2d 123, 125 (Cal. 1978). As petitioner does not argue that there was cause for his default or that failure to consider the merits of his claim will result in a fundamental miscarriage of justice, federal habeas review is procedurally barred. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

**AFFIRMED.**